

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ORBIN AND MARGIE BROCK)	
)	
vs.)	CASE NO. 97-311
)	
WESTERN ROCKCASTLE WATER)	
ASSOCIATION)	

O R D E R

Orbin and Margie A. Brock ("Brocks") filed a complaint against Western Rockcastle Water Association ("Western Rockcastle Water") on April 21, 1997, asking that Western Rockcastle Water install a water line to their home. The complaint alleged that there were four ways for the water to be furnished to their home. By Order of July 29, 1997, the Commission ordered Western Rockcastle Water to satisfy the complaint or file a written answer. On July 31, 1997, Western Rockcastle Water filed an answer denying the allegations of the complaint. Western Rockcastle Water's answer raised the doctrine of *res judicata* as a complete defense to the complaint. The doctrine of *res judicata* operates to bar relitigation of issues which have been litigated or should have been litigated in a prior case between the same parties. Western Rockcastle Water claims that this issue was litigated before the Commission as Case No. 94-404.¹ Commission Staff conducted an investigation of the present complaint on November 7, 1997 and filed a Complaint Investigation Report, dated December 9, 1997 which found that all of the facts contained

¹ Case No. 94-404, Orbin and Margie A. Brock v. Western Rockcastle Water Association.

in Case No. 94-404 remain unchanged.² The report found that there were basically two feasible directions a water line could be constructed and that Western Rockcastle Water should develop a list of expenses for constructing lines and obtaining easements for the two options as contained in the investigation report and described as option one and option two. As a result, on January 13, 1998, the Commission ordered Western Rockcastle Water to prepare and file estimated expenses for the construction of both of the options. On February 9, 1998, Western Rockcastle Water filed the required cost estimates for option one and option two.

The Commission finds that the complaint in this case is based upon the same facts that were contained in Case No. 94-404. In Case No. 94-404 there was a full evidentiary hearing and a memorandum was filed by counsel on these same issues. The Commission finds that the issues raised in the present complaint have been previously litigated in Case No. 94-404. The Commission entered an Order on February 23, 1996, dismissing that complaint and ordering Western Rockcastle Water to file cost and construction estimates for the water service. That Order, entered two years ago, has not been modified, stayed, suspended or revoked. The Commission finds that based upon the complaint, the investigation report and the record as filed herein, there have been no changes of fact or circumstance that would require the Commission to amend its prior Order or require a hearing in this case. There is no allegation or indication in the record that Western Rockcastle Water does not stand ready to obtain rights-of-way and supply water under the provisions of 807 KAR 5:066, Section 11(2).

² The Complaint Investigation Report was attached and filed in an Order dated December 19, 1997.

Based upon the foregoing, the Commission finds the complaint should be dismissed under the doctrine of *res judicata*, there being no significant change of conditions or circumstances between Case No. 94-404 and the present case.

IT IS THEREFORE ORDERED that:

1. The complaint filed against Western Rockcastle Water Association is dismissed under the doctrine of *res judicata*.

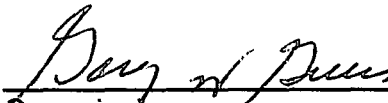
2. The Order entered in Commission Case No. 94-404 is the law of the case.

Done at Frankfort, Kentucky, this 25th day of February, 1998.

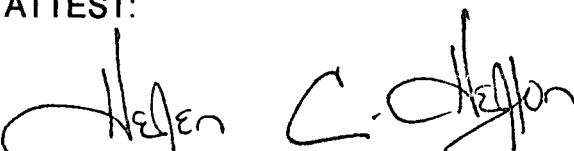
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director